U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: ███████   Office: PHOENIX, AZ   Date: **APR 1 6 2003**

IN RE: Applicant: ████████████████

Application: Application for Waiver of Grounds of Inadmissibility under
                     Section 212(i) of the Immigration and Nationality Act, 8
                     U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the order dismissing the appeal will be withdrawn. The application will be deemed unnecessary and all action on it will be terminated.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured and utilized a fraudulent alien registration card (Form I-551) and social security number in order to obtain unauthorized employment in the United States. The applicant is married to a United States citizen and is the beneficiary of an approved petition for alien relative. He seeks the above waiver in order to remain in the United States and reside with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
>
> *   *   *
>
> (6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-
>
> *   *   *
>
> > (C) MISREPRESENTATION.-
> >
> > (i) IN GENERAL.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act states:

> ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL

MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

On motion, counsel cites a 1991 Immigration and Naturalization Service, now Bureau, memorandum indicating that misrepresentations and/or the presentation of fraudulent documents made to an employer in completing a Form I-9 are not statements made to a United States government official authorized to grant visas or other benefits under the Act and therefore cannot form the basis for the inadmissibility of an alien under section 212(a)(6)(C)(i). Therefore, the applicant's offense of having procured and utilized a fraudulent alien registration card (Form I-551) and social security number in order to obtain unauthorized employment in the United States does not constitute fraud or willful misrepresentation in order to obtain a benefit under the Act. It is concluded that the applicant is not ineligible for admission into the United States under section 212(a)(6)(C)(i) of the Act and does not require a waiver of that inadmissibility under section 212(i) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. After a careful review of the record, it is concluded that the applicant has met these burdens. Accordingly, the order dismissing the appeal will be withdrawn. The application will be deemed unnecessary and all action on it will be terminated.

ORDER: The order of the Administrative Appeals Office dated December 13, 2001 dismissing the appeal is withdrawn. The application is deemed unnecessary and all action on it is terminated.